

Technical Assistance Document 5

Information Sharing with Family Members of Adult Behavioral Health Recipients



**Developed by the
Arizona Department of Health Services
Division of Behavioral Health Services**

**Effective January 3, 2005
Last Revised December 28, 2004
Arizona Department of Health Services
Division of Behavioral Health Services**

Introduction

Engaging family members* and others who are actively participating in an adult behavioral health recipient's care, treatment, and/or supervision is an important part of the assessment, treatment, support, and recovery process. Individuals who participate as part of the team bring accumulated expertise to the treatment process and can serve as a source of significant support to the adult behavioral health recipient. Members of the Adult Clinical Team should continuously work to promote this engagement.

Under certain conditions, agencies may legally and appropriately share certain information with family members and others actively participating in the adult behavioral health recipient's care, treatment, and/or supervision with either the behavioral health recipient's verbal or written authorization. This document explains procedures, specific limitations and exceptions surrounding the sharing of confidential information.

The confidentiality requirements of the law should never interfere with a clinician's responsibility to engage family members and others actively participating in a behavioral health recipient's care, treatment, and/or supervision, if their engagement is in the behavioral health recipient's best interest. Clinicians may and should listen to and take into account information shared by those participating in the behavioral health recipient's care, treatment, and/or supervision.

Purpose

To support meaningful participation by family members and others actively participating in an adult behavioral health recipient's care, by allowing such persons to access confidential information as necessary to support the treatment and recovery process. Sharing of information is supported by allowing members of the clinical team to accept all information provided by family members and by allowing behavioral health participants to provide verbal or written authorization to share otherwise confidential information.

Targeted Population

Behavioral health recipients who are eighteen years of age or older and are enrolled in Arizona's public behavioral health system, as well as family members and others actively participating in their care, treatment and supervision.

Guidelines

Accepting Information from Family Members

Family members or other persons actively participating in the behavioral health recipient's care and treatment often have important and valuable information concerning the behavioral health recipient's treatment and recovery and want to share that information with the adult clinical team. **Confidentiality laws do not prohibit an**

* Please note that definitions for terms used in this document are located in the back.

agency from accepting information. Simply put, an agency never needs an authorization to accept information from family members or other persons.

Confidentiality laws should not be interpreted as a barrier to accepting information and engaging family members or others to participate in the behavioral health recipient's care, treatment and/or supervision. **Always accept information from family members or other persons and document its receipt.**

Sharing Information With an Authorization

An agency may share information if the behavioral health recipient provides authorization for its disclosure. This can occur in one of two ways: either with a verbal authorization or a written authorization.

Verbal Authorization

If the behavioral health recipient or the health care decision maker does not want to sign a written authorization, an agency may still share certain types of information with family members and others actively participating in the behavioral health recipient's care, treatment and/or supervision provided the behavioral health recipient or the health care decision maker provides verbal authorization. **Prior to sharing any information, the agency must determine whether the behavioral health recipient or the health care decision maker objects to any disclosure and whether it is in the behavioral health recipient's best interest to share the information.** After given the opportunity to object, verbal authorization occurs when the behavioral health recipient or the health care decision maker does not object to the sharing of that information.

When a behavioral health recipient or the health care decision maker has given verbal authorization to share information, the agency should notify the behavioral health recipient or the health care decision maker exactly what information is to be shared either verbally or in writing. If the behavioral health recipient does not object and sharing the information will not cause harm to the behavioral health recipient, it may be shared with whomever the behavioral health recipient or the health care decision maker indicates. If sharing the information may be harmful to the behavioral health recipient, **the information must not be shared.** If only part of the information may be harmful, **information must be limited to only the parts that are not harmful.**

There are eight types of information that can be shared when the behavioral health recipient or the health care decision maker provides verbal authorization:

- ◆ Anticipated length of stay;
- ◆ Diagnosis;
- ◆ Discharge plan;
- ◆ Medication;
- ◆ Medication side effects;
- ◆ Need for hospitalization;
- ◆ Prognosis; and
- ◆ Short and long-term treatment goals.

Alcohol or drug abuse information and/or HIV related information that falls into one of these eight categories **cannot** be shared unless the behavioral health recipient or the health care decision maker signs a written authorization.

The agency must inform the behavioral health recipient or the health care decision maker which of the eight types of information will be shared with family members and/or others who are actively participating in the behavioral health recipient's care, treatment, and/or supervision. If the behavioral health recipient or the health care decision maker wishes to share information other than the eight types described above, the agency must obtain a written authorization indicating the information to be shared.

Written Authorization

A written authorization allows an agency to share confidential information to whomever the behavioral health recipient designates in the authorization. The authorization must be signed by the behavioral health recipient or the behavioral health recipient's health care decision maker and contain certain elements depending upon the type of information to be shared.

| Type of Information | Needed Elements within Authorization |
|--|--------------------------------------|
| ♦ Drug or Alcohol Diagnosis ♦ Drug or Alcohol Treatment ♦ Drug or Alcohol Referral | See Attachment A |
| ♦ HIV/AIDS Information ♦ Other Communicable Disease Information | See Attachment B |
| ♦ Evaluation ♦ Treatment ♦ Provision of Behavioral Health Services* | See Attachment C |

*Provision of behavioral health services **other** than the eight types previously mentioned that only require verbal authorization.

Whenever possible, and if it is in the behavioral health recipient's best interest, an agency should always encourage a behavioral health recipient to sign a written authorization that allows the agency to share confidential information with family members and others actively participating in the behavioral health recipient's care, treatment and/or supervision.

Refusal to Provide Authorization

A behavioral health recipient's refusal to authorize sharing information that may help family members or others provide appropriate care may offer the opportunity for clinical intervention. While respecting the behavioral health recipient's refusal, issues surrounding the refusal may be therapeutically helpful to explore.

Right to Request a Review for a Decision to Deny a Request for Information

Family members and others actively participating in the behavioral health recipient's care, treatment, and/or supervision have the **right to request an agency director review** for a decision to deny a request for information. The agency's director must conduct the review for the decision to withhold information and make a determination based on all the facts within five business days of the review. If the agency director sustains the decision to withhold information, the person requesting the information has the right to file a petition with the superior court to have the agency director's decision reviewed. The court is required to hold a hearing within five business days of the request.

Procedures and Exceptions

The following procedures and exceptions will assist agencies in determining whether or not to share information with family members and others actively participating in the behavioral health recipient's care, treatment, and/or supervision.

The following step-by-step guide should be used to determine when an agency can share information with family members and others actively participating in the behavioral health recipient's care, treatment, and/or supervision. In using this guide, begin at Step 1 and proceed to subsequent steps as prompted. **Do not attempt to "shortcut" the process by looking for a specific kind of information in the middle of the guide.** Doing so may lead to the wrong result, and perhaps a violation of the law. The reader will have completed the analysis and will know whether sharing information with family members or others actively participating in the behavioral health recipient's care, treatment, and/or supervision is permissible when the reader sees the phrase, "**You are done.**" For purposes of using this guide, the phrase "family member" includes all persons actively participating in the behavioral health recipient's care, treatment, and/or supervision.

Steps

Step 1. Determine whether the information to be shared with the family member is related to HIV/AIDS or other communicable disease information.

If Yes, the information **is** related to HIV/AIDS or other communicable disease information. Proceed to **Step 2**.

If No, the information **is not** related to HIV/AIDS or other communicable disease information. Proceed to **Step 3**.

Step 2. Determine whether the behavioral health recipient has signed a written authorization that contains all of the elements in **Attachment B** allowing the family member to receive HIV/AIDS or other communicable disease information.

If Yes, the behavioral health recipient **has** signed a written authorization that contains all of the elements in **Attachment B**. Proceed to **Step 12**.

If No, the behavioral health recipient **has not** signed a written authorization that contains all of the elements in **Attachment B**. Proceed to **Step 13**.

Step 3. Determine whether the information to be shared by the agency relates to referral, diagnosis or treatment for a drug or alcohol use disorder.

If Yes, the information **is** related to referral, diagnosis, or treatment for a drug or alcohol use disorder. Proceed to **Step 4**.

If No, the information **is not** related to referral, diagnosis, or treatment for a drug or alcohol use disorder. Proceed to **Step 5**.

Step 4. Determine whether the behavioral health recipient has signed a written authorization that contains all of the elements in **Attachment A**, allowing the family member to receive information related to referral, diagnosis or treatment of a drug or alcohol use disorder.

If Yes, the behavioral health recipient **has** signed a written authorization that contains all of the elements in **Attachment A**. Proceed to **Step 14**.

If No, the behavioral health recipient **has not** signed a written authorization that contains all of the elements in **Attachment A**. Proceed to **Step 15**.

Step 5. Determine whether the behavioral health recipient has signed a written authorization that contains all of the elements in **Attachment C**, which allows family members to receive information that relates to evaluation, treatment or the provision of behavioral health services.

If Yes, the behavioral health recipient **has** signed a written authorization that contains all of the elements in **Attachment C**. Proceed to **Step 16**.

If No, the behavioral health recipient **has not** signed a written authorization that contains all of the elements in **Attachment C**. Proceed to **Step 6**.

Step 6. Determine whether the family member requesting the information is **actively participating** in the behavioral health recipient's care, treatment, and/or supervision.

If Yes, the person **is** an individual or family member actively participating in the behavioral health recipient's care, treatment, and/or supervision. Proceed to **Step 7**.

If No, the person or family member **is not** actively participating in the behavioral health recipient's care, treatment, and/or supervision. Proceed to **Step 11**.

Step 7. The treating professional must interview the behavioral health recipient to determine whether the behavioral health recipient has the capability to make health care decisions.

If Yes, the behavioral health recipient **has** the capability to make health care decisions. Proceed to **Step 8**.

If No, the behavioral health recipient **lacks** the capability to make health care decisions. Proceed to **Step 9**.

Step 8. The treating professional must interview the behavioral health recipient or the health care decision maker to determine whether the behavioral health recipient or the health care decision maker agrees or objects to sharing the information with the family member.

If Yes, the behavioral health recipient **agrees** to the disclosure of the information to the family member. Proceed to **Step 9**.

If No, the behavioral health recipient **objects** to the disclosure of the information to the family member. Proceed to **Step 11**.

Step 9. The agency should determine whether the sharing of information is in the behavioral health recipient's best interest.

If Yes, the agency determines **it is** in the behavioral health recipient's best interest to share the information with the family member. Proceed to **Step 10**.

If No, the agency determines **it is not** in the behavioral health recipient's best interest to share the information with the family member. Proceed to **Step 11**.

Step 10. The agency **can and should** share information with the family member. However, the agency should only disclose information that relates to the behavioral health recipient's anticipated length of stay, diagnosis, discharge plan, medication, medication side effects, need for hospitalization, prognosis, and short and long-term treatment goals, unless the behavioral health recipient signs written authorization to allow the sharing of additional information. **You are done.**

Step 11. The agency **cannot** share information with the family member. You must advise the family member requesting the information that they have the right to request an agency director review of the decision. The agency's director must conduct a review of the decision to withhold information and make a determination based on all the facts within five business days of the review. If the director maintains the decision to withhold information, the person requesting the information has the right to file a petition with the superior court to have the director's decision reviewed. The court is required to hold a hearing within five business days of the request. **You are done.**

Step 12. The agency **must** share information related to HIV/AIDS or other communicable diseases with the family member. Proceed to **Step 3** to assess the disclosure of other information.

Step 13. The agency **cannot** share the HIV/AIDS information with the family member. Proceed to **Step 3** to assess the disclosure of other information.

Step 14. The agency **must** share information related to referral, diagnosis or treatment of a drug and alcohol use disorder with the family member. Proceed to **Step 5** to assess the disclosure of other information.

Step 15. The agency **cannot** share information related to referral, diagnosis or treatment of a drug and/or alcohol use disorder with the family member. Proceed to **Step 5** to assess the disclosure of other information.

Step 16. The agency **must** share the information with the family member. **You are done.**

Even though Steps 11, 13, and 15 do not allow the agency to share information, the agency may still obtain the behavioral health recipient's or the health care decision maker's written authorization at these steps that would then allow the agency to share information.

Definitions

Actively Participating: Having a role in the care, treatment, or supervision of a behavioral health recipient. Agencies must make a determination of whether someone is actively participating on a case-by-case basis.

Adult Clinical Team: A group of individuals working in collaboration who are actively involved in a person's assessment, service planning and service delivery. At a minimum, the team consists of the person, their guardian (if applicable) and a qualified behavioral health representative. The Team may also include members of the enrolled person's family, physical health providers, mental health or social service providers, representatives of other agencies serving the person, professionals representing disciplines related to the person's needs, or other persons identified by the enrolled person.

Anticipated Length of Stay: The anticipated amount of time a behavioral health recipient will remain in a program or treatment regimen.

Behavioral Health Recipient's Best Interests: The determination by a treating professional or the treating professional's designee that a disclosure of confidential information is reasonably likely to promote improved prognosis or life circumstances for the behavioral health recipient.

Clinical factors to consider include:

1. The behavioral health recipient's choice to live with family members and others participating in his or her care, treatment, and/or supervision;
2. The behavioral health recipient's ability to meaningfully communicate information such as medication side effects or target symptoms, without the assistance from family members and others participating in his or her care;

3. The behavioral health recipient's risk of non-adherence to the service plan or treatment plan, potential consequences of that non-adherence and the importance of family members or others participating in his or her care in identifying non-adherence;
4. Issues that may be influencing the behavioral health recipient to not consent to the disclosure;
5. Clinical issues that may be adversely affected if the disclosure is made, including the effect on the therapeutic relationship and/or potential safety issues.
6. Supportive roles that family members may play in the behavioral health recipient's recovery plans.

Diagnosis: A determination of a category or name of a condition, including the severity of such a condition, based on signs and symptoms observed or reported according to the Diagnostic and Statistical Manual for the person being evaluated.

Diagnostic and Statistical Manual: A manual published by the American Psychiatric Association to set forth diagnostic criteria, descriptions and other information to guide the classification and diagnosis of mental disorders.

Discharge Plan: A component of the service or treatment plan prepared in the anticipation of discharging a behavioral health recipient from a program.

Family Members: A spouse, parent, adult child, adult sibling, or other blood relative of a person undergoing treatment, evaluation, or receiving community services.

Health Care Decision Maker: A person who is authorized to make health care decisions for the behavioral health recipient, including a parent of a minor. A person may be authorized to make health care decisions by being a guardian, or a designated agent in a health care power of attorney or mental health care power of attorney. Unless specifically prohibited in a court order or in the document that designates the health care decision maker's authority, a health care decision maker may have access to confidential information and make decisions about disclosure of confidential information. A health care decision maker may also be called a personal representative.*

Health Care Power of Attorney: A behavioral health recipient may designate an adult to act as an agent to make health care decisions on the behavioral health recipient's behalf. The behavioral health recipient may also designate an alternate adult or adults to act as agent if the original designated agent or agents are unwilling or unable to act. A power of attorney is effective when the behavioral health recipient is incapable of

* Title 14, Chapter 5, Article 2 Guardians of Minors Title 14, Chapter 5, Article 3 Guardians of Adults 8-514.05 Foster Care provider access to child health information; consent to treatment 36-3221 Health Care power of attorney; scope; requirements; limitations 36-3231 Surrogate Decision Makers 36-3281 Mental Health power of attorney, scope, definitions

making his or her own health care decisions. To be valid, a power of attorney must be in writing and contain all of the elements required by A.R.S. 36-3221.

Long-Term Treatment Goals: A component of the service or treatment plan that is developed and actively pursued by the behavioral health recipient with the support of the Adult Clinical Team, during and beyond the immediate treatment goals.

Medication: A pharmaceutical agent prescribed by a qualified professional with the intent of treating a behavioral health recipient by preventing or alleviating the symptoms.

Medication Side Effects: An action or effect of a pharmaceutical agent that is in addition to the intended purpose of the medication.

Mental Health Care Power of Attorney: A behavioral health recipient may designate an adult to act as an agent to make mental health care decisions on the behavioral health recipient's behalf. A power of attorney is effective when the behavioral health recipient is incapable of making his or her own mental health care decisions. To be valid, a power of attorney must be in writing and contain all of the elements required by A.R.S. 36-3282.

Need for Hospitalization: An indication of the necessity of treatment in a hospital or inpatient setting.

Others: Individuals, other than family members, actively participating in a person's care, treatment, or supervision.

Prognosis: A treating professional's or the treating professional's designee's determination of the likelihood of a client's progression in treatment and the rationale of such a determination, that is made with the consideration of the behavioral health recipient's motivation, program adherence, resources, and other circumstances.

Short-Term Treatment Goals: A component of the service or treatment plan that is actively pursued by the behavioral health recipient with the support of the Adult Clinical Team, typically within one to three months and up to six months.

Treating Professional: A member of the behavioral health recipients' Adult Clinical Team who is:

- a physician who is licensed in the State of Arizona who is a specialist in psychiatry, or;
- a psychologist who is licensed in the State of Arizona, or;
- a Nurse Practitioner, who is licensed in the State of Arizona and is a specialist in the mental health field.

Verbal Authorization: A verbal agreement by the behavioral health recipient or the Health Care Decision Maker to allow sharing of the behavioral health recipient's confidential information.

Written Authorization: A signed written agreement by the behavioral health recipient or the Health Care Decision Maker to allow sharing of the behavioral health recipient's confidential information.

Attachment A

Elements of an Authorization to Share Information Related to the Diagnosis, Referral or Treatment of a Drug or Alcohol Use Disorder

An authorization that allows a family member (Individual) to receive information related to a drug or alcohol use disorder must contain the following elements:

- ◆ The name or general designation of the agency that is sharing the information;
- ◆ The name of the individual or organization that will receive the information;
- ◆ The name of the person;
- ◆ The purpose or need for sharing the information;
- ◆ How much and what kind of information will be shared;
- ◆ A statement that the person may revoke the authorization at any time, except to the extent that the agency has already acted in reliance on it;
- ◆ The date, event or condition upon which the authorization expires, if not revoked before;
- ◆ The signature of the person or guardian; and
- ◆ The date on which the authorization is signed.
- ◆ Any disclosure, whether written or oral made with the person's authorization as provided above, must be accompanied by the following written statement:

This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR part 2). The federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

- ◆ If the person is a minor, both the minor and his or her parent or legal guardian shall give authorization.
- ◆ If the person is deceased, authorization may be given by:
- ◆ A court appointed executor, administrator or other personal representative;
- ◆ If no such appointments have been made, by the person's spouse; or

- ◆ If there is no spouse, by any responsible member of the person's family.

Attachment B

Elements of an Authorization to Share Information Related to HIV/AIDS or Other Communicable Diseases

An authorization that allows a family member (Individual) to receive information related to a HIV/AIDS or other communicable diseases must contain the following elements:

- ◆ A description of the information identified in a specific and meaningful fashion;
- ◆ The name or other specific identification of the person authorized to share the information;
- ◆ The name or names of the family members (Individuals) that will receive the information;
- ◆ A description of each purpose for sharing the information. The statement “at the request of the person” is a sufficient description of the purpose when a person initiates the authorization and does not, or elects not to, provide a statement of the purpose;
- ◆ An expiration date or an expiration event that relates to the person or the purpose for sharing the information;
- ◆ Signature of the person and date. If a personal representative of the person signed the authorization, a description of the representative’s authority to act for the person must also be provided;
- ◆ The person’s right to revoke the authorization in writing, and either:
 - ◆ The exceptions to the right to revoke and a description of how the person may revoke the authorization; or
 - ◆ A reference to the covered entity’s notice of privacy if the notice of privacy tells the person how to revoke the authorization;
- ◆ A statement in writing which warns that the information is from confidential records which are protected by state law that prohibits further disclosure of the information without the specific written consent of the person to whom it pertains or as otherwise permitted by law.

Attachment C

Elements of an Authorization to Share Information Related to the Provision of Evaluation, Treatment or Behavioral Health Services

An authorization that allows a family member (Individual) to receive information related to the provision of evaluation, treatment or behavioral health services must contain the following elements:

- ◆ A description of the information identified in a specific and meaningful fashion;
- ◆ The name or other specific identification of the person authorized to share the information;
- ◆ The name or names of the family members (Individuals) that will receive the information;
- ◆ A description of each purpose for sharing the information. The statement “at the request of the person” is a sufficient description of the purpose when a person initiates the authorization and does not, or elects not to, provide a statement of the purpose;
- ◆ An expiration date or an expiration event that relates to the person or the purpose for sharing the information;
- ◆ Signature of the person and date. If a personal representative of the person signed the authorization, a description of such representative’s authority to act for the person must also be provided;
- ◆ The person’s right to revoke the authorization in writing, and either:
 - ◆ The exceptions to the right to revoke the authorization and a description of how the person may revoke the authorization; or
 - ◆ A reference to the agency’s notice of privacy if the notice of privacy tells the person how to revoke the authorization;
- ◆ The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization;
- ◆ The potential that information shared can be re-disclosed by the family member (Individual).